



# Storm Water Phase II Final Rule

## Federal and State-Operated MS4s: Program Implementation

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The program for small municipal separate storm sewer systems (MS4s) under the Storm Water Phase II Final Rule includes, in addition to local government jurisdictions, certain Federal and State-operated small MS4s. Federal facilities were not designated for regulation by the NPDES Phase I storm water program for MS4s. The Phase II Final Rule, however, includes the "United States" in the definition of a small MS4, thereby including Federal MS4 operators in the NPDES Phase II storm water program. Federal and State-operated small MS4s can include universities, prisons, hospitals, roads (i.e., departments of transportation), military bases (e.g., State Army National Guard barracks), parks, and office buildings/complexes.

The small MS4 program, largely designed with municipally-operated small MS4s in mind, raises a number of implementation issues for Federal and State operators of regulated small MS4s who must obtain an NPDES permit that requires the development and implementation of a storm water management program that includes the following six minimum control measures: public education and outreach, public participation/involvement, illicit discharge detection and elimination, construction site runoff control, post-construction runoff control, and good housekeeping/pollution prevention for municipal operations (for more information on each measure, see Fact Sheets 2.3 through 2.8). This fact sheet highlights potential implementation issues related to the minimum control measures, then discusses the implementation options included in the rule that may resolve these issues.

### What Are Some Implementation Concerns?

This section profiles the three most common implementation issues raised in the public comments submitted regarding Federal/State implementation of the small MS4 program.

#### How Does the Final Rule Account for Unique Characteristics?

Federal and State small MS4s possess a number of characteristics that set them apart from their municipal counterparts. For example, whereas municipally-operated MS4s largely serve resident populations, many Federal or State-operated MS4s, such as medical clinics and departments of transportation (DOTs), do not. Other types of Federal and State MS4s, such as military bases, prisons, and State universities, serve populations that are different from a typical municipal population. Their unique characteristics might lead Federal or State MS4 operators to question either the need to implement the entire suite of minimum control measures or their ability to comply fully with their Phase II storm water permit. Responsibility for developing a storm water program that comprises the minimum measures lies with the operator of the Federal or State MS4.

#### What If the Operator Lacks Legal Authority?

Three of the minimum control measures (illicit discharge detection and elimination, and the two construction-related measures) require enforceable controls on third party activities to ensure successful implementation of the measure. Some Federal and State operators, however, may not have the necessary legal regulatory authority to adopt these enforceable controls in the same manner as do local governments.

For example, a State DOT that is responsible for the portions of its roads running through urbanized areas may not have the legal authority to impose restrictions on, and penalties against, illicit (i.e., non-storm water) discharges into its MS4 if the source of the discharge is outside the DOT's right-of-way or jurisdiction. As in the case of local governments that lack such authority, State and Federal MS4s are expected to utilize the authority they do possess and to seek cooperative arrangements.

### **How Can the Program Be Implemented in Areas Where There Are Multiple Regulated Entities?**

Since the final rule provides automatic coverage of all small MS4s within an urbanized area, regardless of political boundaries, coverage of multiple governments and agencies in a single area is likely. For example, a city government that operates a small MS4 within an urbanized area must obtain permit coverage alongside the county, State, and Federal DOTs if they all operate a portion of the roads (i.e., MS4s) in the city. All four entities are responsible for developing a storm water management program for their MS4s (or portions thereof) within the urbanized area. EPA encourages State and Federal small MS4 operators to establish cooperative agreements with cities and counties in implementing their storm water programs.

### **Are There Implementation Strategies that Help Facilitate Program Implementation?**

This section offers two hypothetical strategies for resolving the implementation issues raised above. The best solution may include a creative combination of strategies.

#### **STRATEGY #1**

##### ***A Focus on Choosing Appropriate BMPs***

The final rule requires the permittee to choose *appropriate* best management practices (BMPs) for each minimum control measure. In other words, EPA expects Phase II permittees to tailor their storm water management plans and their BMPs to fit the particular characteristics and needs of the permittee and the area served by its MS4. Therefore, the Federal or State operator of a regulated storm sewer system can take advantage of the flexibility provided by the rule to utilize the most suitable minimum control measures for its MS4. Below is an example of tailored activities and BMPs that Federal or State operators can implement for each measure:

- ❑ **Public Education and Outreach.** Distribute brochures and post fliers to educate employees of a Federal hospital about the problems associated with storm water runoff and the steps they can take to

reduce pollutants in storm water discharges. For example, employees could be advised against carelessly discarding trash on the ground or allowing their cars to leak oil/fluids in the parking lot.

- ❑ **Public Participation/Involvement.** Provide notice of storm water management plan development and hold meetings at which employees of a Federal office complex are encouraged to voice their ideas and opinions about the effort. Request volunteers to help develop the plan.
- ❑ **Illicit Discharge Detection and Elimination.** Develop a map of the storm sewer system on a military base. Perform visual dry weather monitoring of any outfalls to determine whether the storm sewer system is receiving any non-storm water discharges from the base. If a dry weather flow is found, trace it back to the source and stop the discharge. Should a Federal military base identify an illicit discharge, the source of which is traced to the boundary of its system, the Federal operator should refer the discharge to the adjoining regulated MS4 for further action.
- ❑ **Construction Site Runoff Control.** Require the implementation of erosion and sediment controls, and control of waste, for any Federal or State DOT road construction. The DOT would review site plans for proper controls, perform inspections, and establish penalties in the construction contract if controls are not implemented. If construction is done directly by the regulated DOT instead of a private contractor, the DOT could be penalized by the NPDES permitting authority for non-compliance with its small MS4 permit in the event that controls are not properly implemented.
- ❑ **Post-Construction Runoff Control.** Require the implementation of post-construction storm water controls for any new construction on the grounds of a prison. This can be required as part of a construction contract, instituted as internal policy, and considered during site plan review.
- ❑ **Pollution Prevention/Good Housekeeping for Municipal Operations.** Train maintenance staff at a State university to employ pollution prevention techniques whenever possible. For example, routinely pick up trash/litter from the university grounds, use less salt on the parking lots and access roads in the winter, perform any maintenance of university vehicles under shelter only, limit pesticide use to the minimum needed, use vegetative buffer strips in the parking lots to filter runoff, and keep dumpster lids closed.

## STRATEGY #2

### *Working with Other Entities*

There may be instances when the Federal or State permittee has limited capabilities to satisfy one or more of the minimum control measures. As discussed above, the permittee may lack the proper legal authority to enforce controls (although it should try to obtain the necessary legal authority if at all possible).

In the case of limited capabilities, the permittee can work with neighboring operators of regulated small MS4s, preferably on a watershed basis, to form a shared storm water management program in which each permittee is responsible for activities that are within individual legal authorities and abilities. The final rule allows the permittee to rely on other entities, with their permission, to implement those minimum measures that the permittee is otherwise unable to implement. Three examples are:

- ❑ A State DOT with limited regulatory legal authority can reference a local sewer district's illicit detection and elimination program in its permit application, provided the program sufficiently addresses illicit discharges into the DOT's storm sewer system.
- ❑ The permittee or NPDES permitting authority can reference such programs as coastal nonpoint pollution control programs, State or local watershed programs, State or local construction programs, and environmental education efforts by public or private entities.
- ❑ The permittee can become a co-permittee with a neighboring Phase I MS4 through a modification of the Phase I MS4's individual permit. This may be the most logical and preferable option for those Federal and State entities located in close proximity to Phase I MS4s.

Choosing to work with other governmental entities as a co-permittee, or referencing parts of each other's plans, can help resolve issues that may arise where multiple regulated jurisdictions exist in the same area. Permittees can avoid duplicative efforts, as well as territorial or regulatory disputes, by working together to implement the storm water program. See Fact Sheet 2.9 for more information on permitting options for regulated small MS4s.

## Suggested Steps for Working with Other Entities

- (1) Identify the boundaries of the urbanized area (see Fact Sheet 2.2 for more information on urbanized areas)
- (2) Identify the operators of storm sewer systems or portions of the systems within the urbanized area such as local, State, Tribal or Federal governments or other entities.
- (3) In seeking permit coverage:
  - (A) Identify where another entity's program may satisfy one or more minimum control measure. If a program has requirements that are equivalent to a minimum control measure's required elements, the operator of the regulated small MS4 may reference the program in its permit application, provided the other entity gives it permission to do so. While such an arrangement relieves the operator from performing the minimum measure itself, the operator remains ultimately responsible for the measure's effective implementation (see Fact Sheet 2.9 for more information on this option)

OR

- (B) Team with an operator of a Phase I MS4 and become a co-permittee on its existing Phase I individual permit (see Fact Sheet 2.9 for more information on this option)

## For Additional Information

### Contact

- ☞ U.S. EPA Office of Wastewater Management
  - Phone: 202 260-5816
  - E-mail: SW2@epa.gov
  - Internet: [www.epa.gov/owm/sw/phase2](http://www.epa.gov/owm/sw/phase2)

### Reference Documents

- ☞ Storm Water Phase II Final Rule Fact Sheet Series
  - Internet: [www.epa.gov/owm/sw/phase2](http://www.epa.gov/owm/sw/phase2)
- ☞ Storm Water Phase II Final Rule (64 FR 68722)
  - Internet: [www.epa.gov/owm/sw/phase2](http://www.epa.gov/owm/sw/phase2)
  - Contact the U.S. EPA Water Resource Center
    - Phone: 202 260-7786
    - E-mail: [center.water-resource@epa.gov](mailto:center.water-resource@epa.gov)